

REMARKS

Applicant has carefully reviewed the Final Office Action of January 27, 2005 and the Advisory Action of April 11, 2005, and offers the following remarks to accompany the above amendments in response thereto.

Applicant initially amends claim 1 to include the subject matter of claim 14. Claim 14 is amended to recite that the application contains source code that generates and utilizes Java link layer sockets. Support for this can be found on page 8, lines 28-30. No new matter is added. As this particular aspect of the Java code has not previously been considered by the Patent Office, it represents a new issue for consideration by the Patent Office. Claim 15 is amended to depend from amended claim 1 so that the elements of claim 15 have appropriate antecedent basis. Claims 15, 23, 30, 32 and 37 are amended to correct typographical errors and to correct antecedent basis. No new matter is added.

Claims 1-8, 12, 13, 16-23, 27, 28, 31-38 were rejected under 35 U.S.C. § 102(e) as being anticipated by Abrol et al. (hereinafter "Abrol"). Claims 14, 15, 29, and 30 were rejected under 35 U.S.C. § 103 as being unpatentable over Abrol in view of Gigliotti et al. (hereinafter "Gigliotti").

As Applicant has amended claim 1 to include the subject matter of claim 14, Applicant addresses the two rejections together. For the Patent Office to combine references in an obviousness determination, the Patent Office must do two things. First, the Patent Office must articulate a motivation to combine the references. Second, the Patent Office must support the articulated motivation with actual evidence. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). While the range of available sources for the evidence is broad, the breadth of available sources does not diminish the requirement for actual evidence. *Id.* Applicant is cognizant of the fact that almost all inventions are combinations of existing elements. However, one of the reasons that an invention is patentable is that there is no suggestion to combine the existing elements in the manner claimed.

Even if the combination is proper, to establish *prima facie* obviousness, the Patent Office must show where each and every element of the claim is shown in the combination. MPEP § 2143.03. If the Patent Office cannot establish obviousness, the claims are allowable.

Applicant is aware that Java existed prior to Applicant's invention. However, Applicant finds no teaching or suggestion in the cited references to use Java or object oriented instructions in conjunction with accessing lower layers of the protocol stack as claimed. Gigliotti is unrelated

to Applicant's invention and merely shows a conventional Java virtual machine. There is nothing in Gigliotti to suggest Java's use in protocol stack management. Applicant previously argued that the Patent Office has not properly supported its motivation to combine Abrol and Gigliotti. The Advisory Action merely states that these arguments are not persuasive. Such a terse explanation is insufficient to satisfy the Patent Office's procedural requirements in setting forth an obviousness rejection.

Applicant repeats its arguments for convenience. Specifically, the Patent Office asserts that it would be obvious "to modify Abrol's system with Gigliotti's JAVA script based on specific design reason." This statement lacks any evidentiary support. As such, this statement is an improper motivation to combine the references. Since the Patent Office has not properly supported its motivation to combine the references, the combination of references is improper. Since the combination of references is improper, and the references individually do not establish obviousness, the rejection does not establish obviousness for original claim 14 (now amended claim 1). Since the Patent Office has not established obviousness for amended claim 1, claim 1 and its dependent claims 1-8 and 12-15 are allowable.

Claim 2 deserves special mention in that it recites that "the header information includes header information associated with the transport layer and the inner socket layer is a transport socket." The Patent Office asserts that this element is taught by Abrol col. 5, lines 18-27 and 61-65. Applicant traverses this assertion.

Abrol, col. 5, lines 18-27 states in full:

To illustrate operation, the MS 110 receives IP packets. The communication protocol stack 280 of the MS 110 unencapsulates the IP packets, and passes them to the transport layer 202 (see FIG. 3). A field in the IP packet header indicates the transport, which may be either TCP or UDP. Based on the destination port number specified in the transport layer header, the data is routed to the appropriate receive queue of communication protocol stack 280, which corresponds to a particular socket. The data may then be transmitted to application 260.

While the passage does indicate that there is a header and does mention the word "socket", there is no teaching or suggestion that this is a reference to an inner layer socket, and there is clearly no mention of a transport socket. As such, this passage does not show the claim element.

Abrol, col. 5, lines 61-65 states in full: "As stated above, application 260 may create a socket that allows data communications between at least one of the protocol layers 202, 204, 206, 208, 210, 212 and application 260 to reduce the latency inherent in the use of

communication protocol stack 280." If anything, this passage teaches away from the claimed invention. Abrol describes his purpose is to reduce the latency. The claimed invention actually increases latency substantially. As such, Abrol teaches away from the claimed invention.

Claim 16 is amended to clarify that the IL API is distinct from the application. Support for this can be found in Figure 2, which shows IL API 204 distinct from application 202. No new matter is added. In contrast, Abrol states "application 260 may create a socket that allows data communications between at least one of the protocol layers 202, 204, 206, 208, 210, 212 and application 260. . . ." (Abrol, col. 5, lines 61-64). Thus, if Abrol teaches any sort of inner layer access (a point which Applicant does not concede), the inner layer access is done by the application, not an IL API distinct from the application. As such, Abrol does not teach or suggest the claim element and Abrol does not anticipate or render obvious claim 16. Claims 17-23 and 27-30 depend from claim 16, and are likewise not anticipated or rendered obvious. Applicant's arguments about amended claim 1 and the combination of Abrol and Gigliotti also apply to claims 29 and 30. Thus, claims 29 and 30 have an independent reason why these claims are allowable.

Claims 31 and 32 are amended in a fashion similar to claim 16. Claims 31 and 32's dependent claims 37 and 38 are allowable at least for the same reasons.

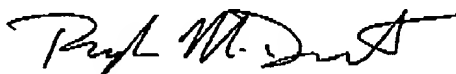
Applicant requests reconsideration of the rejections in light of the amendments and remarks presented herein. The Patent Office has not properly combined the references and has not shown the IL API distinct from the application. Likewise, the Patent Office has not shown using object-oriented instructions in the manner claimed. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

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Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By:



Taylor M. Davenport
Registration No. 42,466
P.O. Box 1287
Cary, NC 27512
Telephone: (919) 654-4520

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